

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**VS.**

**CHARMAR BROWN,**

**Defendant.**

**CASE NO. 8:06CR116**

## AMENDED MEMORANDUM AND ORDER

This matter is before the Court on the Defendant's Notice of Appeal and Motion for a Certificate of Appealability (Filing No. 846) filed through counsel. The Defendant appeals from the Memorandum and Order and Judgment (Filing Nos. 837, 838) denying the Defendant's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody ("§ 2255 motion") and the Memorandum and Order denying the Defendant's Motion to Alter or Amend his Judgment Under Federal Rule of Civil Procedure 59(e) (Filing No. 845).

Before the Defendant may appeal the denial of his § 2255 motion, a “Certificate of Appealability” must issue. Pursuant to the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (“AEDPA”), the right to appeal the denial of a § 2255 motion is governed by the certificate of appealability requirements of 28 U.S.C. § 2253(c). 28 U.S.C. § 2253(c)(2) provides that a certificate of appealability may issue only if the applicant has made a substantial showing of the denial of a constitutional right:

(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—

□ □ □ □

(B) the final order in a proceeding under section 2255.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

28 U.S.C. § 2253(c).

A “substantial showing of the denial of a constitutional right” requires a demonstration “that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were “adequate to deserve encouragement to proceed further.”” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983)).

The issues raised in the § 2255 and Rule 59(e) motions were carefully considered. For the reasons set forth in the Court’s previously issued orders, the Court concludes that the Defendant has not made a substantial showing of the denial of a constitutional right as required by 28 U.S.C. § 2253(c).

IT IS ORDERED that the Defendant's request for a certificate of appealability (Filing No. 846) is denied.

DATED this 13<sup>th</sup> day of January, 2012.

BY THE COURT

s/Laurie Smith Camp  
Chief United States District Judge